

THE COPYRIGHT LAW ENFORCEMENT OF *COMPACT DISC* (A Case Study of the Legal Certainty of Copyright Law in Pekanbaru)

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Abstract: The development of science and technology has resulted in the broad impact towards civilization. The development of science and technology is followed by social issues and the development of law for the sake of manifesting regularity and order. There have been so many human activities focusing on creating something beneficial for them. Copyright works are among the activities that humans do. Someone's creation manifested in the form of the work of art and books are not constantly meant for the personal interest of its creator, but also presented to meet the society's needs. However, there is legal protection towards the art creator in regards to his work to earn some economic benefits regardless of the fact that other parties may illegally make use of the work for the sake of their benefit. There has been the legislation on copyright or copyright law containing the protection towards creative creators, musicians, and producers so that they are not harmed by the commerce of their works in the form of pirated cassette tapes or Compact Disc (CD). The circulation and sales of pirated CDs are occurring in several points of the city crowd in Pekanbaru, the capital city of Riau. There are hundreds of Pekanbaru inhabitants who make a living from selling pirated CDs. The development of pirated CD sales keeps increasing due to the merchants' lack of knowledge and society's and law enforcement officers' ignorance. This matter violates copyright law. Besides, the circulation and sales of pirated CDs have led to the state loses since the tax potentials that should come into the state treasury are missing due to their circulation in the hands of piracy perpetrators and merchants. Dealing with the case of pirated CD circulation and sales requires the roles of police officers, customs, Riau Province government, and Riau City government to implement the copyright law.

Keywords: Law Enforcement, Copyright Law, Compact Disc

Introduction

Indonesia is a law-based country, not merely a dominance-based one. Law enforcement must be compatible with the prevailing conditions and provisions and with the five principles (*Pancasila* i.e. the five basic principles of the Republic of Indonesia: the belief in God Almighty, humanity that is just and civilized, the unity of Indonesia, and democracy guided by the wisdom of representatives) and the Constitution of Indonesian Republic of 1945. The law must be enforced for the sake of achieving the goals and ideas of the nation as formulated in the commencement of the Constitution of Indonesian Republic in the year of 1945 particularly in the fourth paragraph that is, establishing the Indonesian State Government protecting the whole nation and the whole motherland of Indonesia for the sake of improving the public welfare, educating the nation's life, and participating in succeeding the world law and order based on the eternal peace and social justice. European nations have started cogitating over the Intellectual Property Right (Haki) since the beginning of the eighteenth century.

We had been able to see the protection of someone's creation due to moral reasons. In the Roman time, the poem of a poet named Martial was recited without permission. Martial named this person's action as *plagium*.⁽¹⁾ In the past few years, the piracy level of music and songs' copyright in several countries in around the world such as Brazil, China, India, Mexico, Pakistan, Indonesia, Paraguay, Russia, Spain, and Ukraine has reached a high figure. For example, Indonesian Recording Industry Association (ASIRI) in 1996 noted 20 tapes of *Compact Disc* (CD) of pirated music album

circulating in the market. In the following twelve years, specifically in 2008, the figure swelled into 550 million tapes. The ratio on the circulation of pirated and legal music CD albums in 2007 had reached 96%: 4%. Also, this figure is predicted to keep increasing.(2) The copyright issues have recently gained a lot of attention, particularly from the realms of both industrial entrepreneurs and consumers considering that the emerging number of copyright infringement. Copyright infringement occurs if the related copyright materials are used without permission. Another condition of copyright infringement is there should be some similarities between the original and the pirated works. There have been a lot of copyright infringements regarding songs or music. The major infringement becoming the main focus of the Intellectual Property Right law is any infringement having something to do with the media or tools being used in the form of cassette tapes, Compact Disc (CD), Video Compact Disc (VCD), or Digital Video Disc (DVD).

Method

This study uses sociological research which is a process of truth-disclosure based on the use of basic concepts known in sociology. These basic concepts function as scientific means in order to reveal the truth contained in people's lives. The basic concepts that are intended include social groups, social interactions, culture, institutions, social strata, social pluralism, power and authority, social problems of social change, and so forth.

Results

A. Criminalization Policy for Copyright Infringement of Compact Disc (CD)

One of the essential parts of the criminalization aspect towards copyright infringement in the Constitution Number 19 of 2002 in regards to copyright is the absence of conditions for denunciation (offense complaint/ *klatch delict*) from the copyright owner so that the public authorities can perform some actions towards the copyright infringement. Therefore, anytime the investigating authorities both the national police and the civil servant investigators (PPNS) can perform the investigation and the confiscation towards the goods considered as evidence from anyone or any company suspected to be doing copyright infringement (Article 1 Verse 2, Article 33 Verse 1, Article 38 Verse 1, and the Constitutional Book of Criminal Procedural Law/ KUHAP). This is the law consequence of ordinary offense in a criminalization process in which the law enforcer may arrest or take action towards copyright infringers without having to wait for the denunciation from the copyright holders. The criminalization policy of Compact Disc (CD) Copyright Infringement in Pekanbaru City is conducted by performing socialization to the merchants and the society and educating them about copyright so that they will be educated about what copyright is and will be aware that selling pirated cassette tapes and CDs is an illegal act.

The efforts that can be done by the government to perform law enforcement towards the circulation of pirated cassette tapes and CDs in Pekanbaru City are:

- The law enforcers cooperate to improve the law enforcement;
- The police officers conducted raids on an ongoing basis; and
- The government issues taxes on the original cassette tapes and CDs

Answer Options	Respondents	Percentage 100%
Ever, more than five times	0	0%
Ever, less than five times	87	87%
Never	13	13%
Have no idea	0	0%
Total figure	100	100%

Source: processed data 2013

Based on the above table, 87 out of 100 merchants have been exposed to raids for less than five times with the percentage of 87% during their trading activities in the related area. Based on the above data, it can be concluded that the authorities rarely performed raids towards the merchants. The evidence is among 100 merchants, 87% answered that they had been exposed to raids but less than five times during five years of their trading activities in the trade area. To support the data, the researcher cross-checked the faithfulness of the information to Pekanbaru City Resort Police (Poltabes) particularly the Head of Investigation and Criminal Unit represented by Koko Ferdinand SH (Brigadier) as the member of the investigation team. He stated that the members of Pekanbaru City Resort Police (Poltabes) frequently performed raids towards the merchants, but they did not remember the figure. The raids towards pirated cassette tapes and CDs are conducted by confiscating the pirated goods in the form of pirated cassette tapes or CDs. Meanwhile, the merchants are given warning not to sell pirated cassette tapes and CDs. It was allegedly found out that the pirated cassette tapes and CDs are sent from Grogol District in Jakarta. The researcher interviewed one of the merchants who once has been exposed to raids named Edwar in regards to the actions conducted by the police officers when the raids were going on. Edwar stated that when he was exposed to the raids, all his goods such as cassette tapes and CDs were confiscated by the police officers. He must also give some money to the police officers. Otherwise, his case would be extended and taken to court. Based on the merchant's testimony, it can be seen that Indonesian's law enforcers have a weak mentality. In other words, the authorized officers who are supposed to perform law enforcement have misused their authority to gain an economic benefit for their own sake. To support the data regarding the enforcement of copyright law towards the circulation of pirated cassette tapes and CDs in Pekanbaru City, the researcher asked the merchants through questionnaires related to whether or not they have obtained legal counseling. Below are the merchants' answers:

Answer options	Respondents	Percentage 100%
Ever	-	-
Never	97	97%
Have no idea	3	3%

Source: Processed data 2013

Based on the above data, among 100 merchants becoming the samples of the survey, nobody answered that they had obtained legal counseling. Also, there were 97 merchants stating that they have never obtained legal counseling which accounts for 97%. Three merchants answered that they had no idea, which accounts for 3%. Based on the data, it can be concluded that there has never been any legal counseling in Pekanbaru City.

Table 1.1. :
Types of Cases and Prosecution Results of Illegal CDs

No.	Case Description	2006	2007	2008
1	Number of cases	113	108	199
2	Production of Goods	2	2	7
3	Sellers/Stores/Merchants	111	106	192
4	Number of suspects	155	109	256
5	Number of evidence in the form of CDs	1,5 million	1,1 million	1,4 million

Tebel 2.2. :
Types of Cases and Case Data of Compilation of Islamic Law (KHI) in 2000-2002

No.	Case Description	2006	2007	2008
1	Copyright	124	109	161
2	Brand	55	33	9*
3	Proprietary	1	1	-
4	Other Intellectual Property Right	-	-	-
	Number	180	143	170
* Cases specifically handled by the Investigation Agency of the Headquarters of Indonesian Republic Police Officers (Koser Mabes Polri)				
<i>Source: Headquarters of Indonesian Republic Police Officers</i>				

The above description and data give a clear description of the lack of society's understanding of the Intellectual Property Right regarding property right. The piracy of the record albums attracts the society's attention, particularly the business people both in Indonesia or overseas. Besides, referring to the juridical aspect, copyright is the main commodity playing an important role in the music industry. The society is lack of understanding towards Intellectual Property Right regarding copyright, particularly in the music industry. In can be indicated from the emerging pirated cassette tapes circulating in the market with the publicly-opened way and venue of trading. The Constitution on Copyright Number 28 of 2014 is highly expected to be a new legal framework to anticipate the outbreak of copyright infringement in Indonesia committed by irresponsible parties with the intention of making profit rapidly with despicable ways through breaking the law protecting others' rights.

B. Obstacles of Law Enforcement towards Copyright Infringement of Compact Disc (CD)

Based on the results of the study that can be seen in the questionnaires distributed to the merchants of pirated cassette tapes and CDs and the consumers and in the interview with the Head of Investigation and Criminal Unit in Pekanbaru City Resort Police, the researcher obtained several factors causing the difficulties in the copyright law enforcement towards the circulation of pirated cassette tapes and CDs. They are:

1. Price Factor

Pirated cassette tapes and CDs cost much cheaper compared to the original cassette tapes and CDs. It can be observed in the following table:

Answer Option	Respondents	Percentage 100%
Cheaper	99	99%
Better	1	0.1%
Have no idea	-	-
Total Figure	100	100%

Source: processed data of 2013

Based on the above table, it can be seen that most of the respondents answered that 99 people or 99% of them purchased pirated cassette tapes or CDs because they cost cheaper. In the market, we can see the huge price difference between the original cassette tapes and CDs and the pirated ones.

The pirated cassette tapes or CDs cost only 15,000 rupiahs (fifteen thousand rupiahs), while the original ones cost five times more expensive that is, 70,000 rupiahs (seventy thousand rupiahs). This situation is compounded by the pirated cassette tapes and CDs which are easily accessible because they are freely sold in the market. This factor has influenced the consumers to be more interested in purchasing pirated cassette tapes and CDs.

There are some factors causing the difficulties of the copyright law enforcement coming from the society. They are:

- a. The society's attitude wishing for the easily accessible goods;
- b. The society's lack of purchasing power; and
- c. The society's attitude which tends to get a shortcut to obtain something

2. The Factor of Society Who are Not Concerned with Quality

The consumers' responses to the differences between the quality of original and pirated cassette tapes and CDs are as follows:

Answer Options	Respondents	Percentage 100%
Original ones are better	100	100%
Have no idea	-	-
Total Figure	100	100%

Source: Processed Data 2013

Based on the above table, 100% of the consumers are aware that the original cassette tapes are better. Also, most of the consumers know the differences between the original and pirated cassette tapes and CDs. Approximately 90% of the respondents can differentiate the original cassette tapes and CDs from the pirated ones. Therefore, it is highly unlikely that they will make mistakes when purchasing pirated or original cassette tapes and CDs. Similarly, the merchants can differentiate the original cassette tapes and CDs from the pirated ones with the percentage of 80%. If the merchants can differentiate the pirated cassette tapes and CDs from the original ones, they are consequently able to inform which ones are original and which ones are pirated to the buyers.

Below are the differences between the original cassette tapes and CDs and the pirated ones:

- a. There are number sign or censor-pass mark on the cassette tapes' and CDs' covers or the CD piece;
- b. The name of the manufacturing or distributing company is officially stamped;
- c. There is a three-dimensional hologram on their covers
- d. There is a sticker with a Value-Added Tax (VAT) Paid Off sticker

3. The Factor of Less Litigious and Apathetic Society

Consumers' knowledge on the legality of pirated cassette tapes and CDs can be seen in the following table:

Answer Options	Respondents	Percentage 100%
Legal	19	19%
Illegal	80	80%
Have no idea	1	1%
Total Figure	100	100%

Source: Processed Data of 2013

Based on the above table, it can be concluded that public awareness on the obedience to the law is very lacking. It can be proved by the consumers' attitude purchasing pirated cassette tapes and CDs in Pekanbaru City, even though most of them are aware that the pirated cassette tapes and CDs are illegal. The merchants also find out that the pirated cassette tapes and CDs they sell are illegal goods. However, they still keep selling the pirated cassette tapes and CDs. Also, most of the merchants do not have the Press Release Business License (SIUPP) and Business Place License (SITU) which should be owned by every merchant.

Essential factors causing the obstacles and difficulties of law enforcement towards the circulation of pirated cassette tapes and CDs are:

- a. The society does not obey the law;
- b. Society's disobedience;
- c. Not concerned about the law;
- d. Society's purchasing power; and
- e. Society's lack of knowledge

Discussion

According to Siti Cholistyaningsih, SH, MH, the Ministry of Law and Human Right of Riau Province, they are only capable of conducting the counseling twice in Pekanbaru City due to the fund limitation in conducting the counseling for the merchants and society. Conducting the counseling regarding the copyright law requires a huge amount of the fund to rent the building, to provide meals, and to pay the keynote speaker. The police officers stated that they are not capable of reaching out the whole areas in Pekanbaru since they are lack of investigators. For Pekanbaru City, the City Police of Pekanbaru City only has eight investigators to handle the violation towards the Intellectual Property Right violation.

Based on the above statement, it can be concluded that the limitation of supporting facilities highly influences the effectiveness of law enforcement. Therefore, the government must improve the supporting facilities to enhance the law enforcement since the limitation of supporting facilities will highly influence the law enforcers'ability in enhancing law enforcement. Based on the above reality, it implies that the society's lack awareness of obeying and caring about the law and the state is a factor leading to the difficulties in enforcing the copyright law towards the circulation of pirated cassette tapes and CDs in Pekanbaru. This fact is by the data obtained from the field, particularly from the consumers and the merchants. Based on the questionnaire responses from the merchants and buyers and the interview result with the Head of Division of Legal Services at the Ministry of Law and Human Right in Riau Province named Siti Cholistyaningsih SH, MR, it can be concluded that the society's law awareness in Pekanbaru city is very lacking. Their apathetic attitude towards the law and the state can be easily felt. It is proved by the society's attitude who are not concerned with the loss experienced by the state upon the pirated cassette tapes and CDs. According to the researcher, the government must frequently conduct socialization to the merchants in Pekanbaru and the society in general regarding the importance of law awareness and the caring attitude towards the state for the sake of public interest, of improving the copyright law enforcement, and of increasing the community standard of living. Thus, society's apathetic attitude can be gradually changed. This is because, in the researcher's point of view, the most effective way of anticipating the obstacles in enforcing the copyright law towards the circulation of the pirated cassette tapes and CDs is by emotionally approaching the society's mind about the urgency of copyright law enforcement. Therefore, the merchants and consumers will consequently participate in enforcing the copyright law without the feeling of compulsion or fear towards the penalty threat.

Conclusion

After the researcher discussed the various existing problems regarding the violation of song or music copyright about Compact Disc (CD) piracy, she can draw some conclusions as follows:

1. The background of the problem in regards to the increasing number of song and music piracy in the form of cassette tapes and CDs in Pekanbaru City is caused by the society's lack of understanding on the urgency, role, and the law protection of copyright. Besides, there is a community structure and legal cultures which are not aware of the meaning of spiritual and moral values in regards to copyright. The society's lack of understanding towards the meaning and function of copyright and its protection is influenced by the society's low income and eagerness in possessing music cassette tapes or CDs with affordable price. Thus, this factor is

misused by the copyright infringers to produce pirated cassette tapes and CDs with the affordable price since they do not need to pay royalties to both the composers and the singers. Also, they do not need to pay the Value-Added Tax (PPN) to the state. On the other hand, the music or song record producer must cover all those expenses. The legal sanctions for the copyright infringers have not been firmly enforced both criminal and civil sanctions.

2. The government's role in enforcing the copyright law for the sake of handling the piracy case of song or music copyright is by giving firm sanctions for the copyright infringers. Also, it is necessary to conduct coordination with law enforcer authorities such as police officers, court, attorney, and customs and excises to perform a firm action for the song or music copyright infringers. Meanwhile, the role of song and music association both Indonesian Recording Industry Association (ASIRI) and Indonesian Copyright Works Foundation (YKCI) is participating actively in eradicating the copyright infringement cases existing in the society. Both associations constantly conduct socialization to the society on the attitude of anti-piracy for song or music copyright such as distributing brochures on anti-piracy, song or music copyright, and anti-piracy campaign via both newspapers and public service announcements; conducting meetings with the government to demand their seriousness in handling song or music copyright infringements.

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